



AG/3727
JFW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: :
Mark B. Littlejohn et al. : Examiner: T.M. Mai
U.S. Serial No. 09/978,484 : Group Art Unit: 3727
Filed October 17, 2001 :
Docket No. 2312 (FJ-00-39) :
For: DEEP DISH DISPOSABLE CONTAINER :
.....

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

BRIEF ON APPEAL UNDER 37 CFR §41.37(c)

Sir:

Applicant hereby submits its *Brief on Appeal* in the above-noted United States Patent Application. A *Notice of Appeal* was submitted on August 13, 2004 appealing the rejection of Claims 1-6, 9-38, 50-86, 108 and 109. Please charge the fee for the *Brief* to our Deposit Account No. 50-0935.

This *Brief* is being filed with a *Petition* and fee for a two-month *Extension of Time*. If additional extensions are required, please consider this paper a *Petition* therefore and charge our Deposit Account No. 50-0935.

12/09/2004 STHOMAS 00000001 500935 09978484

01 FC:1402

340.00 DA

Though the court may have believed that each of the elements in the patented device was old, it does not follow that the combination was unpatentable. **We need not elaborate upon the rule that a novel combination of old elements which so cooperate with each other so as to produce a new and useful result or a substantial increase in efficiency, is patentable.** See *Lewyt Corp. v. Health-Mor, Inc.*, 7 Cir., 181 F.2d 855, 85 USPQ 335, certiorari denied 340 U.S. 823, 71 S.Ct. 57, 95 L.Ed. 605, 87 USPQ 432; *Blaw-Knox Co. v. Lain Co.*, 7 Cir., 230 F.2d 373, 108 USPQ 356. *Weller Manufacturing Company v. Wen Products, Inc.*, 7 Cir., 231 F.2d 795, 798, 109 USPQ 73, 75 (1956).

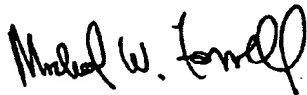
E. Claim Group IV Is Drawn To Patentable Subject Matter

The Claims of Group IV are generally subsumed within the scope of the claims of Group III and are believed patentable for the reasons stated in Section VII(D) immediately above. These claims are independently patentable with respect to the claims of Group III because they contain additional recitation of specific amounts of excess paperboard which leads to the surprising result of high strength with a relatively high number of scores, which is directly contrary to the teachings of the primary reference.

Inventions which are not taught by the prior art, especially those exhibiting superior results as is the case with the present invention, are patentable.

All claims should be allowed.

Respectfully submitted,



Michael W. Ferrell
Attorney for Applicant
Reg. No. 31,158

Ferrells, PLLC
P.O. Box 312
Clifton, Virginia 20124-1706
Telephone: (703) 968-8600
Facsimile: (703) 968-5500
November 29, 2004